

# **EXHIBIT “S-2”**

1 COUNTY COURT OF THE STATE OF NEW YORK  
2 COUNTY OF ONONDAGA : CRIMINAL TERM  
3 -----  
4 THE PEOPLE OF THE STATE OF NEW YORK,  
5  
6 vs. Indictment No.  
92-1114-1  
7 Motion/Bail  
8  
9 HECTOR RIVAS,  
10 Defendant. NYSID 1375082H  
11 -----  
12 Criminal Courts Building  
13 Syracuse, New York 13202  
14 April 20, 2015  
15 B e f o r e :  
16 HONORABLE THOMAS J. MILLER,  
17 Judge  
18 A p p e a r a n c e s :  
19 WILLIAM J. FITZPATRICK ESQ.  
20 District Attorney, Onondaga County  
21 BY: ROBERT MORAN, ESQ.  
22 Assistant District Attorney and  
23 JAMES MAXWELL, ESQ.  
24 Assistant District Attorney  
25 LANGONE AND ASSOCIATES  
Attorneys for the Defendant  
600 Old Country Road  
Garden City, New York 11530  
BY: RICHARD M. LANGONE, ESQ  
  
BOUSQUET HOLSTEIN, PLLC  
Attorneys for the Defendant  
110 West Fayette Street  
Syracuse, New York 13202  
BY: SIDNEY L. MANES, ESQ.

1 APPEARANCES CONTINUED:  
2 EDWARD W. KLEIN, ESQ,  
3 Attorney for the Defendant  
4 217 Montgomery Street  
5 Syracuse, New York 13202  
6 Defendant Present in Person  
7 Reported by:  
8 Ann A. Makowiec  
9 Supreme Court Reporter

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Ann A. Makowiec, Supreme Court Reporter

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1 THE CLERK: Hector Rivas.

2 THE COURT: Could the attorneys please  
3 approach?

4 (Whereupon, Counsel approached the Bench  
5 and an off-the-record discussion ensued.)

6 THE COURT: Mr. Langone, Mr. Manes, you  
7 each represent Hector Rivas?

8 MR. LANGONE: Yes, your Honor.

9 MR. MANES: Yes, your Honor.

10 THE COURT: This is Hector Rivas present  
11 with you gentlemen?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Good morning, sir.

14 THE DEFENDANT: Good morning.

15 THE COURT: Rob Moran, as well as Jim  
16 Maxwell appear on behalf of the District  
17 Attorney's Office.

18 Just some housekeeping things. First of  
19 all, Mr. Rivas has moved to vacate his conviction  
20 in accordance with Criminal Procedure Law Section  
21 440.10(1)(h). The motion is predicated on the  
22 March 11th, 2015, decision of the Second Circuit  
23 Court of Appeals which found that the defendant  
24 received constitutionally ineffective assistance  
25 of counsel at his trial in 1993.

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1                   Accordingly, the Second Circuit remanded  
2                   this matter back to District Court with a mandate  
3                   to issue a Writ of Habeas Corpus unless the state  
4                   takes concrete and substantial steps, in their  
5                   words, to expeditiously retry Mr. Rivas.

6                   By a letter dated April 16th, 2015, Mr.  
7                   Moran indicated that there was no opposition to  
8                   the Criminal Procedure 440.10 motion.

9                   Accordingly, the motion to vacate the  
10                  defendant's conviction is hereby granted in  
11                  accordance with CPL Section 440.10(1)(h) based  
12                  upon a finding that the defendant was deprived of  
13                  the effective assistance of counsel at his prior  
14                  trial.

15                  At our last Court date on March 25, 2015,  
16                  I asked Mr. Langone to inform the Court by today's  
17                  date as to whether he would be representing Mr.  
18                  Rivas for purposes of a retrial, whether Mr. Rivas  
19                  would be hiring another attorney or whether it  
20                  would be necessary for me to assign an attorney  
21                  per the Second Circuit Court decision. I would  
22                  like to give a trial date. So I would like to  
23                  move this case along.

24                  Mr. Langone, did you want to be heard with  
25                  regard to the issue of counsel, sir?

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1 MR. LANGONE: Yes, your Honor. We would  
2 make an application to grant informal poor person  
3 status to Mr. Rivas in light of the circumstances  
4 of twenty-two years of incarceration. I would  
5 request the appointment of counsel. Mr. Rivas  
6 does have counsel of choice that he'd like to  
7 retain and -- but it's a logistical matter. The  
8 family doesn't have the funds at this point, but  
9 at some point there may be another counsel coming  
10 into the case. But for the moment, certainly, we  
11 would request appointment of local counsel, and I  
12 would request, with permission of the Court, to  
13 stay on board at least for purposes of the motion  
14 practice in this case because I've got such  
15 history and familiarity with the facts and  
16 circumstances.

17 THE COURT: I know that's true both of you  
18 as well as Mr. Manes. It just so happens that  
19 while you were speaking, Mr. Langone, Ed Klein  
20 walked in; and I have spoken with Mr. Klein  
21 previously about this possibility. Mr. Rivas, Mr.  
22 Klein is an excellent attorney. He's very  
23 experienced. I've had the pleasure of having him  
24 here in trial, previously; and Mr. Klein, if you  
25 would be willing, sir, I'd like to appoint you to

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1 represent Mr. Rivas. Would you be willing to  
2 accept the assignment?

3 MR. KLEIN: I would, your Honor. We have  
4 previously spoken about it, and I have indicated I  
5 would do that if it were to arise.

6 THE COURT: Well, thank you. Thank you.  
7 Okay.

8 Let me talk to you about a trial date,  
9 perhaps the issue of bail.

10 At this point I'd like to set a trial  
11 date, however, Richard here at the Bench you've  
12 indicated you're anticipating sort of an extended  
13 motion practice. You didn't want me to go ahead  
14 and set a trial date was my impression. What are  
15 your thoughts with regard to that?

16 MR. LANGONE: Well, Judge, I understand  
17 the Court's desire to keep control of this docket.  
18 We would recommend that if you set a trial date  
19 you set it far enough out, perhaps November or  
20 December. As I indicated to the Court, I do  
21 perceive that there will be extensive motion  
22 practice in this case.

23 I have an eleven thousand page transcript,  
24 a brief due in the Second Circuit in June that I  
25 just started on. So I'm -- I'm in up to my knees

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1 so to speak. So, personally, it would be a great  
2 help to me to have the motion schedule for me to  
3 file motions in July. I could file an omnibus  
4 motion, basically all pretty much all at once for  
5 the Court to dispose of, but I just need some time  
6 in light of this appeal in the Second Circuit.

7 THE COURT: Richard, pardon me for a  
8 second.

9 MR. LANGONE: Yes.

10 THE COURT: Mr. Klein, let me ask you  
11 about your availability as far as a trial  
12 calendar. I'm hearing November, December, I'd  
13 like to move this case along as quickly as  
14 possible. I'll certainly work, you know, with all  
15 of the attorneys regarding that. What's your  
16 thoughts?

17 MR. KLEIN: I think, given the history and  
18 what's been said here this morning, I think  
19 November, December, is moving it along in light of  
20 the history of the case.

21 THE COURT: Do the People want to be heard  
22 regarding this?

23 MR. MORAN: That time frame works for us,  
24 Judge. I would suggest, if it's okay, perhaps the  
25 first week in December --



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1 THE COURT: First week in December.

2 MR. MORAN: -- to give us some time both  
3 to clear the Thanksgiving holiday and enough time  
4 before Christmas to get it in.

5 THE COURT: December 7th is that first  
6 full week, gentlemen. What I'd like to do, based  
7 on what you've indicated today, is schedule this  
8 matter for trial on December 7th. If you'd like  
9 it moved up and you're able to do that, I'd be  
10 happy to accommodate that as well. If it needs to  
11 be moved back further, I'll certainly work with  
12 all of you. So twelve, seven is our trial date.

13 The last time we were together, Richard,  
14 you indicated that you wanted to be heard on the  
15 issue of bail. I'm certainly willing to listen to  
16 that. I've got a trial that I'm starting up in a  
17 little while, so, go ahead if you'd like.

18 MR. LANGONE: Yes, your Honor. Mr. Rivas  
19 right now is entitled to the presumption of  
20 innocence as the prior conviction has now been  
21 vacated. Therefore, the monopoly of rights  
22 involving with the CPL to which he is entitled to  
23 which includes the consideration of bail pending  
24 trial.

25 I would say this, sir, that with respect

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1 to the ultimate question of risk of flight, there  
2 is none. Mr. Rivas has served almost twenty-two  
3 and a half years on this life sentence. He's  
4 basically almost served the minimum on his  
5 sentence. As I had indicated previously to the  
6 Court, there has been no disciplinary history on  
7 the part of this man. He has a blemish free  
8 institutional record. He was on bail twenty-two,  
9 twenty-three, years ago. If he were, God forbid,  
10 let's say make believe he were reconvicted, he  
11 would -- this Court would be able to consider all  
12 of the good things he's done during his time of  
13 incarceration and could impose a sentence of  
14 actually fifteen years to life.

15 I would note to the Court that the  
16 decision of the Second Circuit in this case was  
17 that for the first time ever the Second Circuit  
18 acknowledged in this case a colorable claim of  
19 actual innocence. Again, the facts were almost  
20 six years, over five years after -- he was not  
21 indicted for almost five years after the homicide  
22 occurred because it was Eric Mitchell the medical  
23 examiner's opinion that the death occurred between  
24 Saturday and Sunday and the People knew they could  
25 not convict him during that period of time. It

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1 was only until after Dr. Mitchell was -- viewed  
2 brain slides and other evidence that all of a  
3 sudden he decided to go back into the file and  
4 look at and this changed his opinion with respect  
5 to time of death to -- to open the window to  
6 include Friday when Hector Rivas did not have an  
7 alibi. We know that when the brain slides -- we  
8 know that the bases upon which he made his medical  
9 determination as to extending the time of death  
10 were -- were debunked by Dr. Cyril Wecht in his  
11 affidavit in his testimony at the Federal hearing.

12 So this is a case of questionable,  
13 questionable, real issues of reasonable doubt here  
14 and the Second Circuit determined that. Now, I  
15 don't know what the district attorney's is going  
16 to come back with going forward, but as it stands  
17 and in light of the fact that it took him over  
18 five years to indict Mr. Rivas in the initial  
19 matter, he has no incentive to flee in this case.  
20 He has family ties that have stayed with him  
21 throughout the period of -- of incarceration. He  
22 has relatives here in this Courtroom right now.  
23 He's married. He has a wife, Marilyn, who lives  
24 in the Bronx, who's got a stable residence. She's  
25 employed. There is -- there is no indication, no

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1 reason to believe that he would not be amenable to  
2 process of this Court.

3 So for those reasons, Judge, in light of  
4 the amount of time that's gone by, the factual  
5 weakness of the case, family support, we would  
6 respectfully submit that he be released in his own  
7 recognizance. I have no problem -- we have no  
8 objection to a GPS bracelet, if that's the Court's  
9 desire, and that's -- that's our request at this  
10 time, your Honor. Thank you.

11 THE COURT: Thank you. Do the People want  
12 to be heard?

13 MR. MORAN: I do, Judge.

14 First, in response to Mr. Langone's  
15 comments about Dr. Mitchell. I don't believe that  
16 the record supports the idea that Dr. Mitchell  
17 changed his opinion, that Dr. Mitchell's opinion  
18 was in fact a hard she died on Saturday. I don't  
19 think that's true. There was and there's going to  
20 be, I'm sure, some argument and some expert  
21 testimony at the trial in this case regarding  
22 exactly what the time of death was, but he didn't  
23 change his opinion. His opinion was always, as  
24 these things are at the margins, flexible, meaning  
25 they can't tell with precision whether we are

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1 talking about two days or three days past the time  
2 of death.

3 The evidence at the trial in this case  
4 will be that Valerie Hill was murdered on that  
5 Friday night. That nobody saw her after about  
6 eight p.m. on that date. One of the pieces of  
7 evidence that was used at the trial in 1993 and  
8 that we expect to be at the trial in this case is  
9 that she had her car repaired that afternoon and  
10 that the odometer reading had been taken.

11 We know from there she went and picked up  
12 some airline tickets that she had purchased  
13 through a travel agent and that after that she  
14 went home. That route was reconstructed as part  
15 of the evidence in this case, and we were able to  
16 substantiate the idea that she went from the car  
17 repair to pick up her tickets then home. That car  
18 never moved from Hickok Avenue, meaning as of  
19 Friday night when she got home that car never  
20 moved again.

21 She had planned to take a trip to Saratoga  
22 to visit a friend either in the evening of the  
23 27th or the morning of the 28th. She never showed  
24 up for that planned weekend with her friend. She  
25 did not answer repeated phone calls from multiple

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1 people Saturday or Sunday morning which was  
2 unusual for her at the time.

3 There will be evidence in the case or at  
4 the trial of this case of Mr. Rivas's obsession  
5 with Miss Hill. They had a relationship. She had  
6 terminated that relationship. For months, he had  
7 pursued her obsessively. There was an avalanche  
8 of letters sent to her by Mr. Rivas. There were  
9 daily visits, sometimes multiple times in the same  
10 day, where Mr. Rivas would come to Hickok Avenue  
11 looking for her. He would enter her apartment on  
12 occasion without her notice when she wasn't home,  
13 he followed her and he called her friends  
14 sometimes in a drunken state asking where she was  
15 and what was going on with her and inquiring about  
16 the relationship.

17 Mr. Rivas made some statements as part of  
18 the investigation in this case. Those statements  
19 were refuted by other more credible witnesses.  
20 His account of his visits to Hickok Avenue that  
21 night were inconsistent with other evidence. He  
22 claims to have visited Hickok on the 27th at about  
23 two p.m., then had returned to Cazenovia, made  
24 some plans to return back to Syracuse to go to  
25 Coleman's and then stopped by at her apartment at



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1 six p.m., that she wasn't home, that he slipped a  
2 note under her door at six p.m. on the 27th.  
3 Other witnesses, neighbors and the like observed  
4 Mr. Rivas at that address at about three  
5 forty-five staying until about four thirty, give  
6 or take, and there were some discrepancy between  
7 some of the witnesses but they put him there that  
8 afternoon for a relatively long stretch of time.  
9 He claimed that she wasn't home at six o'clock,  
10 yet other witnesses said they spoke to her on the  
11 phone at her apartment at about five thirty.

12 We know she went to dinner that night with  
13 her father at about seven p.m. He says he left  
14 Coleman's at about eleven and that he went  
15 directly to Albert's in Cazenovia.

16 Other witnesses, employees of a liquor  
17 store which was on the route between Coleman's and  
18 Miss Hill's apartment, say that Mr. Rivas himself  
19 came in at about nine fifty and purchased two  
20 bottles of alcohol both consistent with bottles  
21 recovered at the scene where her body was  
22 recovered on Monday.

23 Further, witnesses placed Mr. Rivas's car  
24 outside of her apartment between ten thirty and  
25 eleven that night, maybe even as late as one.

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1 o'clock in the morning on Hickok Avenue.

2 His months, Judge, of obsessive behavior  
3 and pursuit of Miss Hill mysteriously end on the  
4 28th and 29th where he makes no efforts to contact  
5 her presumably, according to our reading evidence,  
6 because he knew she was dead.

7 Finally, Judge, two more things. The  
8 crime scene, this was not a burglary. There was  
9 no sexual assault, although there was some  
10 violation of Miss Hill. It was a brutal  
11 humiliation and murder of a twenty-eight year old  
12 nurse who otherwise was not involved in any kind  
13 of scenario where you would expect that to happen.

14 Finally, Judge, Mr. Rivas made a sort of  
15 drunken confession where he says Valerie, Valerie,  
16 I didn't mean to do it, overheard by one of his  
17 friends.

18 Judge, I summarize the evidence because,  
19 ultimately, this case is going to go to trial, and  
20 the evidence that this jury is going to hear in  
21 2015 is not substantially different than what it  
22 heard in 1993, and we'll see what that jury thinks  
23 of this evidence, but this evidence is, in the  
24 People's opinion, strong. He we look forward to  
25 having a day in Court and putting this case before



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1 a new jury in 2015.

2 For the reasons, Judge, I've laid out, we  
3 do think Mr. Rivas is a flight risk, and we are  
4 asking you to either set no bail or set one  
5 million dollars cash or two million dollars bond.

6 THE COURT: First, before I rule on the --  
7 on the bail issue. Mr. Moran, it's my  
8 recollection that our last time that we were all  
9 together that the People announced ready for  
10 trial.

11 MR. MORAN: We did.

12 THE COURT: Now that this has been  
13 vacated, are the People re announcing their  
14 readiness for trial?

15 MR. MORAN: We are, Judge.

16 THE COURT: Okay. Taking into  
17 consideration what Mr. Langone has said on behalf  
18 of the defendant, as well as what Mr. Moran has  
19 said on behalf of the People, I am going to set a  
20 bail in the amount of five hundred thousand  
21 dollars cash or bond; five hundred thousand cash  
22 or bond. I will adjourn this matter for thirty  
23 days to May 26th for control purposes.

24 Why don't I give you a motion schedule  
25 today as well. Your motions should be filed on or

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1 before June 4, People's response June 11th. We'll  
2 argue motions here in Court on June 18th.

3 MR. LANGONE: Your Honor --

4 THE COURT: Yes.

5 MR. LANGONE: July is impossible to do  
6 this because June is when I have this appeal due.

7 THE COURT: Absolutely.

8 MR. LANGONE: Could we make it July 4th or  
9 that's not going to work, July 4th.

10 MR. MORAN: Can we approach, Judge, to  
11 discuss dates?

12 THE COURT: Where is Ed? Is Ed still in  
13 the Courtroom? Ed, come on up, please.

14 (Whereupon, Counsel approached the Bench  
15 and an off-the-record discussion ensued.)

16 THE COURT: Okay. Pretrial conference May  
17 26th. Motion schedule is as follows: Defendant  
18 to file any motions on or before August 10.  
19 People's response nine, fourteen; September 14.  
20 We'll argue motions here in court on September  
21 21st. See you back here May 26th. Thank you.

22 MR. MORAN: Thank you.

23 MR. LANGONE: Thank you.

24 THE COURT: Trial date December 7th.  
25

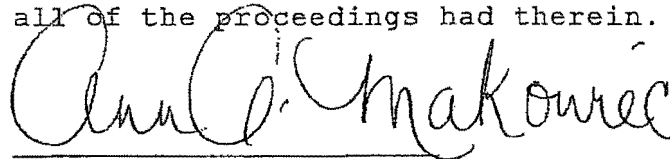
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C E R T I F I C A T E

This is to certify that I am a Senior Court Reporter of the Fifth Judicial District; that I attended and reported the above-entitled proceedings; that I have compared the foregoing with my original minutes taken therein, and that it is a true and correct transcript thereof and all of the proceedings had therein.



Ann A. Makowiec,  
Official Court Reporter

Dated: April 28, 2015